

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ryan Meltzer	Team: Team # 6	CCRB Case #: 200710288	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/14/2007 9:10 AM	Location of Incident: On Atkins Avenue between Linden Boulevard and Hegeman Avenue	Precinct: 75	18 Mo. SOL 1/14/2009	EO SOL 1/14/2009	
Date/Time CV Reported Thu, 07/19/2007 9:37 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/19/2007 9:37 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Aisha Ward	12831	939673	075 PCT
2. SGT Roberto Melendez	05442	899587	075 PCT
3. POM Jason Jackson	10260	938704	075 PCT
4. POM S. Joyce		938739	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Roberto Melendez	Abuse: Sgt. Roberto Melendez searched the car in which § 87(2)(b) was an occupant.	
B.POF Aisha Ward	Abuse: PO Aisha Ward searched the car in which § 87(2)(b) was an occupant.	
C.POM Jason Jackson	Abuse: PO Jason Jackson searched the car in which § 87(2)(b) was an occupant.	
D.POM S. Joyce	Abuse: PO S. Joyce searched the car in which § 87(2)(b) was an occupant.	

Synopsis

§ 87(2)(b) alleged that on July 14, 2007 at 9:10 AM, PO Aisha Ward and Sgt. Roberto Melendez stopped her vehicle on Atkins Avenue between Linden Boulevard and Hegeman Avenue, in Brooklyn. § 87(2)(b) was unable to produce any paperwork verifying her lawful ownership of the vehicle she was driving, so PO Ward asked § 87(2)(b) to step out of her vehicle. At this point, § 87(2)(b) stated, Sgt. Melendez and PO Ward searched her vehicle (Allegations A and B), ultimately producing an empty beer can for which she was later issued a summons. As PO Ward was writing up § 87(2)(b)'s summonses, PO Jason Jackson and PO S. Joyce arrived in a marked RMP. § 87(2)(b) alleged that PO Jackson and PO Joyce, too, searched her vehicle (Allegations C and D). § 87(2)(b) was issued four summonses and released.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) called the CCRB to file this complaint on July 19, 2007 at 9:37 AM (Encl. 9A-B). She was reached by phone on August 13, 2007, at which time she provided an initial statement regarding the events of July 14, 2007 (Encl. 10A-B). Finally, § 87(2)(b) was interviewed at her home, at § 87(2)(b), on September 13, 2007 (Encl. 11A-D). § 87(2)(g)

In both her initial phone statement and her CCRB statement, § 87(2)(b) insisted that this incident occurred on July 15, 2007. It was only when she found a copy of her summons for § 87(2)(b) —dated July 14, 2007—that § 87(2)(b) notified the investigator of this discrepancy.

§ 87(2)(b) was interviewed at her home at § 87(2)(b) on September 13, 2007 at 12:08 PM. § 87(2)(b) is a § 87(2)(b)-old white female, 5'6", 185 lbs., with brown hair and brown eyes.

§ 87(2)(b) stated that on July 14, 2007 at approximately 7:00 AM, she was driving her white 1995 Plymouth Neon along Atkins Avenue, in Brooklyn. She had just picked up her vehicle from a mechanic shop—it had been towed at 5:00 that morning in order to fix a faulty battery. As she was driving her vehicle away from the shop, she noticed that the car's battery power was waning; for this reason, she backed her vehicle into the intersection of Dumont Avenue and Atkins Avenue in order to turn her car around and drive in the opposite direction. She was traveling south on Atkins Avenue—approaching Linden Boulevard—when she saw somebody who she thought would know where her mechanic was. (In her initial phone statement, she said that she recognized this individual as a mechanic.) She slowed her vehicle to call to this individual, but she realized that there was a car behind her, so she did not stop completely. (In her initial phone statement, she did not mention that the car trailing her was a marked police car.) At the next block, on Atkins Avenue, two uniformed police officers in a marked RMP pulled § 87(2)(b) over. PO Aisha Ward, the driver of the RMP, was a light-skinned black female, 30 years old, 5'4", 145 pounds, and Sgt. Roberto Melendez, the passenger in the RMP, was a dark-skinned male, 38 years old, 5'11", 175-180 pounds.

§ 87(2)(b) asked the officers whether there was a problem. PO Ward and Sgt. Melendez told § 87(2)(b) to get out of her car, explaining, "You have no window." § 87(2)(b)'s window had been broken in an accident.) She could not recall the officers asking for her ID before ordering her out of her vehicle. PO Ward and Sgt. Melendez mentioned something about the condition of the car, which was being driven by a screwdriver because § 87(2)(b) had lost the key a few weeks back. For this reason, the officers stated that they suspected that § 87(2)(b)'s vehicle may have been stolen. § 87(2)(b) explained that the vehicle belonged to her, and that she had the paperwork to prove it inside her glove compartment. § 87(2)(b) proceeded to search for the paperwork, but it was hidden because, according to

§ 87(2)(b) “people rifle through the car since the window is broken.” § 87(2)(b) admitted that she did not find the paperwork right away (she feared somebody may have stolen these documents), but she handed PO Ward her expired passport. PO Ward told § 87(2)(b) that she could not read § 87(2)(b)’s passport. (She later stated that she was already out of her vehicle and the officers were already searching her car when PO Ward and Sgt. Melendez asked for her license and registration.)

After § 87(2)(b) failed to find her paperwork, the officers searched her glove compartment and found her registration, but not a valid insurance card. (Accordingly, she later stated that PO Ward and Sgt. Melendez must have asked for her identification information before searching her vehicle.) However, § 87(2)(b) maintained that the officers never asked if they could look inside of her car, and further stated that she never verbally consented to any search.

PO Ward and Sgt. Melendez ran § 87(2)(b)’s license, but in the meantime, both officers searched § 87(2)(b)’s car and insisted that she stand outside of the vehicle while they did so. PO Ward searched the vehicle extensively, while Sgt. Melendez only put his head in the car and looked around. § 87(2)(b) described the search as thorough and invasive, stating that PO Ward “reached in, peeked under seats, pulled things out from under the seats...and went into the door.” Nevertheless, the officers searched the vehicle for approximately one hour. During this time, the officers questioned § 87(2)(b) about the neighborhood, drug transactions in the area, and § 87(2)(b)’s history in the neighborhood.

Approximately 15 minutes later, two other officers (PO Jason Jackson, a tall, black male, 30 years old; and PO S. Joyce, a white male, stocky, with a reddish face and blonde hair) arrived in a marked RMP and proceeded to search § 87(2)(b)’s car. § 87(2)(b) claimed that she had asked PO Ward and Sgt. Melendez why she had been pulled over, and they declined to tell her; it was only when PO Jackson and PO Joyce arrived that the latter explained that it was because § 87(2)(b) had been “driving furtively.” In addition, PO Ward and/or Sgt. Melendez had pulled out an empty bottle of beer from under § 87(2)(b)’s seat—§ 87(2)(b) maintained that it was not hers and it could not have been hers because she has certain health conditions which prohibit the consumption of alcohol—so when PO Joyce noticed this bottle, he told PO Ward to issue § 87(2)(b) a summons for § 87(2)(b). PO Jackson and PO Joyce asked § 87(2)(b) to open her trunk, but § 87(2)(b) refused. PO Jackson and PO Joyce then removed the back seat of § 87(2)(b)’s vehicle so that they could access the trunk, failing to replace the seat afterwards.

§ 87(2)(b)’s car was not in the vicinity of her home at the time of her field interview, so the investigator was unable to take any photographs of the vehicle in question. She was also unable to find the summonses that had been issued to her—she supposed that her tenants were going through her belongings—but she believed that they had been written up and administered to her by PO Ward. § 87(2)(b) additionally alleged that this stop was part of a pattern of targeted abuse by officers in the 75th Precinct, in retaliation for a lawsuit which she filed against the NYPD in § 87(2)(b).

Additionally, § 87(2)(b) advised the investigator that, due to a head injury she sustained in November of 2006, she occasionally experiences memory loss.

Results of Investigation

Officer Statements

PO Aisha Ward

Summonses

Copies of § 87(2)(b)’s summonses for § 87(2)(b) (§ 87(2)(b)) and § 87(2)(b) (§ 87(2)(b)) were obtained from the 75th Precinct (Encl. 12A-B). The first summons is time-stamped at 9:02 AM, and the second is time-stamped at 9:10 AM. Both summonses were issued by PO Ward.

Memo Book

PO Ward recorded the following entries in her memo book regarding her interaction with § 87(2)(b) at 8:40 AM, she stopped a vehicle at Hegeman Boulevard and Atkins Avenue. At 9:20 AM, she issued four summonses—two criminal court summonses and two moving violations summonses (Encl. 13A-B). In her in-CCRB statement, she explained that the summonses were issued for § 87(2)(b).

§ 87(2)(b), and one infraction which she could not recall.

CCRB Testimony

PO Aisha Ward was interviewed at the CCRB on December 11, 2007 at 9:52 AM (Encl. 14A-C). PO Ward is a § 87(2)(b)-old black female, 5'4", 148 lbs., with brown hair and brown eyes.

PO Ward worked a tour of 0705 x 1540 on July 14, 2007. Her assignment was Sergeant's Operator for Sgt. Roberto Melendez. Both officers were assigned to a marked RMP (#1311), and both officers were in uniform.

On July 14, 2007 at 8:40 AM, PO Ward was driving an RMP with Sgt. Melendez along Atkins Avenue when she observed § 87(2)(b)'s car stopped in the middle of the road ahead of her. PO Ward noted that § 87(2)(b)'s vehicle was old, and it was missing one side-view mirror, one bumper, one rear window (most likely the rear driver's side window), and a rear license plate. When the RMP pulled up behind § 87(2)(b), § 87(2)(b) moved her vehicle to the right-hand side of the road. PO Ward attempted to proceed past § 87(2)(b)'s car, but § 87(2)(b) pulled back into the road in front of the RMP and drove into the intersection of Atkins Avenue and Hegeman Boulevard. § 87(2)(b) then stopped her vehicle in the intersection, shifted it into reverse and backed it onto Atkins Avenue. At this point, PO Ward pulled over § 87(2)(b)'s vehicle. She explained that her first intent in stopping § 87(2)(b)'s vehicle was to check § 87(2)(b)'s paperwork and ensure that everything was okay—§ 87(2)(b)'s way of driving suggested that she was confused. PO Ward later acknowledged that she was stopping § 87(2)(b) both to verify § 87(2)(b)'s ownership of the vehicle and to investigate the way that § 87(2)(b) was driving. (Near the conclusion of the interview, PO Ward stated that she intended to issue § 87(2)(b) a summons for § 87(2)(b) as soon as she decided to pull her over. That, PO Ward continued, was why she pulled § 87(2)(b) over in the first place.) PO Ward described the neighborhood in which § 87(2)(b)'s vehicle was stopped as "big on drugs." She denied that the nature of the area influenced her decision to pull over § 87(2)(b) but she acknowledged that she questioned § 87(2)(b) about what she was doing in this neighborhood at this time in the morning.

PO Ward and Sgt. Melendez approached § 87(2)(b)'s vehicle—PO Ward walked to the driver's side of § 87(2)(b)'s vehicle, and Sgt. Melendez walked to the passenger side—and PO Ward asked § 87(2)(b) for her license and any paperwork proving valid insurance and ownership of the vehicle. § 87(2)(b) said that she did not have any such documents, and she began to look through a little bag which she had in her possession, taking items out and placing them in various places in the car as she searched for the documents. § 87(2)(b) also looked through the glove box, the arm rest, and the back seat of the car, announcing that she was looking for documents. As § 87(2)(b) searched for this paperwork, PO Ward and Sgt. Melendez just stood outside of the car and watched § 87(2)(b). PO Ward denied assisting § 87(2)(b) in her search for ID, and she could not recall whether any other officers assisted § 87(2)(b) in this undertaking. Ultimately, PO Ward reported, § 87(2)(b) was unable to produce any paperwork for the car. Moreover, the name that § 87(2)(b) provided PO Ward did not match the name under which her vehicle appeared to be registered.

When it became clear that § 87(2)(b) had no paperwork verifying her ownership of the vehicle, PO Ward asked § 87(2)(b) to step out of her vehicle. § 87(2)(b) complied. PO Ward asked § 87(2)(b) to step out of the vehicle because she felt unsafe with § 87(2)(b) inside of the car. PO Ward and Sgt. Melendez asked § 87(2)(b) a number of questions (e.g., whether she was drunk or under the influence of anything, a charge which § 87(2)(b) denied), to which § 87(2)(b) responded that she had nothing and that she was in the area to go to the store, or to drop off or pick up something—according to PO Ward, § 87(2)(b) provided a number of stories to explain her presence in the area. PO Ward told § 87(2)(b) that she could go to jail because she had no paperwork for the car and no driver's license, and because she was not providing the officers with a consistent name under which to search the DMV database for vehicle ownership information.

As PO Ward spoke to § 87(2)(b), Sgt. Melendez was standing nearby and keeping an eye on § 87(2)(b) who at times walked around her car and at other times stood in one place but moved her body all around. At some point around this time, another RMP drove past the scene of PO Ward's interaction with § 87(2)(b) and the two officers inside decided to stop and check in on PO Ward and Sgt. Melendez. PO Ward stated that both officers were light-skinned males, possibly white or Hispanic. She was confident that they were officers (not any higher rank) from her precinct, and they were not on overtime.

duty. These other officers stood near § 87(2)(b) and made sure that she did not go anywhere, joining Sgt. Melendez in telling her, “Be still. Let us do what we’re doing.” PO Ward affirmed that § 87(2)(b) did not possess anything illegal, and the name § 87(2)(b) provided PO Ward came up clean (the car did not appear to be stolen), so PO Ward returned to the RMP and began to issue § 87(2)(b) a number of summonses.

PO Ward mentioned that the condition of § 87(2)(b)'s car—combined with § 87(2)(b)'s conduct when she was pulled over and her inability to provide any documents verifying her ownership of the car—led her to believe that § 87(2)(b) was driving a stolen vehicle. She added that when she and Sgt. Melendez pulled over § 87(2)(b) she saw § 87(2)(b) reach into the top of her shirt with her right hand (under the front collar) and extract something, then reach over to the passenger side of the vehicle and attempt to place this object under the front passenger seat while the vehicle was still in motion. When asked how she was able to see these actions, PO Ward explained that she watched § 87(2)(b) through the rear windshield of § 87(2)(b)'s vehicle. When she approached § 87(2)(b)'s vehicle, she could see the inside, which she described as “very dirty and very crowded with things [like] papers and clothes.” PO Ward also stated that § 87(2)(b) seemed to be under the influence when PO Ward and Sgt. Melendez interviewed her after stopping her vehicle: she clarified that § 87(2)(b)'s behavior was very erratic—she made unusual movements with her body, such as tugging at her shirt when asked for documents—and her eyes were wide and glossy. When asked whether she was able to find any evidence that § 87(2)(b) was under the influence of any alcohol or narcotics, PO Ward stated that there was an empty 16-oz. can of beer under the front driver's seat. She saw this can through the broken rear driver's side window of § 87(2)(b)'s car; she then reached through the window and picked this can up off of the floor. PO Ward could not recall whether § 87(2)(b) was inside or outside of the vehicle when she did this (she later stated that she found the beer can around the time that § 87(2)(b) was searching for her paperwork). PO Ward clarified that she did not believe that § 87(2)(b) was drunk, but that she was under the influence of something else. She did not smell any alcohol on § 87(2)(b)'s breath or her person. When asked whether she went through the car (or reached into the car) at any other point before or after extracting the beer can from the car, PO Ward responded negatively. She also said that she did not recall whether her sergeant or the other two officers who arrived later ever reached into § 87(2)(b)'s vehicle—though she stated that they were at § 87(2)(b)'s vehicle as PO Ward was at her RMP, writing § 87(2)(b)'s summonses over the course of approximately 30 minutes. She added that she was not really paying attention to what the other officers were doing at § 87(2)(b)'s car. PO Ward denied that she or any of the other officers at the scene searched § 87(2)(b)'s car in any way, and she also denied that the trunk of § 87(2)(b)'s vehicle was opened at any point.

PO Ward affirmed that § 87(2)(b) was ultimately never able to provide any valid documentation proving her ownership of her vehicle; this is why PO Ward issued her the criminal court summonses mentioned above. The decision to issue these summonses to § 87(2)(b) was a joint decision between PO Ward and Sgt. Melendez. After issuing the summonses to § 87(2)(b), PO Ward and Sgt. Melendez released § 87(2)(b). When asked why she allowed § 87(2)(b) to continue driving, if she indeed suspected that § 87(2)(b) was under the influence of any mind-altering substance(s), PO Ward replied, “I could say I suspected her to be under the influence, but I couldn't prove anything.” She did not conduct any kind of sobriety test on § 87(2)(b) only a standard inquiry.

Sgt. Roberto Melendez

Memo Book

Sgt. Melendez recorded the following memo book entries with respect to his interaction with § 87(2)(b) on this date: At 8:40 AM, he stopped a vehicle at Atkins Avenue and Hegeman Boulevard, and at 9:20 AM, PO Ward issued four summonses to the driver of this vehicle—§ 87(2)(b) (Encl. 15A-C).

CCRB Testimony

Sgt. Roberto Melendez was interviewed at the CCRB on January 30, 2008 at 10:32 AM (Encl. 15D-F). Sgt. Melendez is a § 87(2)(b)-old Hispanic male, 5'10", 220 lbs., with brown hair and brown eyes.

Sgt. Melendez worked a tour of 0655 x 1552 on July 14, 2007. His assignment was patrol supervisor with PO Aisha Ward. Both officers were assigned to a marked RMP (#1311), and both officers were in uniform.

On July 14, 2007 at approximately 8:40 AM, Sgt. Melendez and PO Ward were engaged in a routine patrol in their RMP within the confines of the 75th Precinct. PO Ward was driving the RMP. Sgt. Melendez observed a vehicle driving erratically on Atkins Avenue, heading towards Linden Boulevard: the vehicle was weaving in and out of traffic, and it failed to stop when Sgt. Melendez and PO Ward turned on their RMP's sirens. Sgt. Melendez added that, at one point, the driver (later identified as § 87(2)(b)) stopped and backed up her vehicle on Atkins Avenue, then resumed driving forward. § 87(2)(b) finally pulled over on Atkins Avenue, approximately 1 minute after Sgt. Melendez and PO Ward had activated their sirens. Sgt. Melendez stated that at this point, he had decided to pull over § 87(2)(b) because she was driving erratically and because one of her rear windows appeared to be broken—an indication to Sgt. Melendez that § 87(2)(b) may have been driving a stolen vehicle.

Even before Sgt. Melendez and PO Ward exited their RMP, Sgt. Melendez observed § 87(2)(b) fidgeting and moving around in her seat: § 87(2)(b) was moving her body around a lot and moving her hands from side to side. § 87(2)(b) then exited her vehicle from the front passenger door. Sgt. Melendez considered this action to be "suspicious," and he expressed concern that she might have had a weapon. Sgt. Melendez and PO Ward approached § 87(2)(b)'s car—Sgt. Melendez on the right and PO Ward on the left. As he got closer to the front passenger side of § 87(2)(b)'s vehicle, Sgt. Melendez observed that one of § 87(2)(b)'s windows was broken (Sgt. Melendez noted that he had seen this window before he and PO Ward stopped § 87(2)(b) that her steering column had been tampered with (another sign of a possibly stolen vehicle), and that there was an open can of beer in the back seat of the car. When asked how he determined that § 87(2)(b)'s window was broken—not simply rolled down—Sgt. Melendez only affirmed his observation, stating, "It was broken." As for the can of beer, Sgt. Melendez did not recall where specifically inside of § 87(2)(b)'s car this object was sighted, but he said that PO Ward observed it, as well. He did not recall asking § 87(2)(b) about the can of beer, but he said that PO Ward might have asked § 87(2)(b) about it.

As Sgt. Melendez and PO Ward approached § 87(2)(b) who was standing outside of her car, § 87(2)(b) began talking "non-stop": Sgt. Melendez could not recall what exactly § 87(2)(b) said, but he remembered her saying, "Officer, everything's all right." Sgt. Melendez asked § 87(2)(b) what she was doing in this particular neighborhood at this time of day, and § 87(2)(b) responded that she was visiting friends. § 87(2)(b) was "evasive," as she did not directly answer the officers' questions. Sgt. Melendez and PO Ward stood near § 87(2)(b)'s vehicle and asked § 87(2)(b) for ID, but she was unable to produce any valid identification or paperwork proving her ownership of the vehicle she was driving. Sgt. Melendez did not recall whether § 87(2)(b) claimed to have ownership documents, whether she admitted that she did not, or whether she searched her vehicle for such paperwork before it was determined that she did not have any in her possession at this time.

§ 87(2)(b) eventually provided the officers with a page from an outdated passport. Sgt. Melendez estimated that § 87(2)(b) produced this document a few minutes after he first asked her for ID, but he said that he could not recall where § 87(2)(b) found it. To Sgt. Melendez's recollection, this was the only identification document that § 87(2)(b) was able to show him and PO Ward. Sgt. Melendez and PO Ward brought § 87(2)(b)'s passport page to their RMP, where they used the built-in computer to check § 87(2)(b)'s name and verify her identity. Sgt. Melendez and PO Ward were able to confirm that § 87(2)(b)'s vehicle was not stolen (Sgt. Melendez did not know who the car belonged to, but he believed that the car did not actually belong to § 87(2)(b) and that § 87(2)(b) had dictated legitimate personal information to the officers. Sgt. Melendez ran a warrant check on § 87(2)(b) which was returned with negative results. After they verified § 87(2)(b)'s information, PO Ward issued § 87(2)(b) four summonses at Sgt. Melendez's discretion: § 87(2)(b)

When asked what, specifically, § 87(2)(b) citation referred to, Sgt. Melendez explained that it was the empty can of beer he had seen in § 87(2)(b)'s car. The investigator asked Sgt. Melendez how he determined that the can was empty, to which Sgt. Melendez responded, "I don't know. I checked it, or my officer might have pulled it out or checked it." The investigator asked Sgt. Melendez whether he suspected that § 87(2)(b) had consumed this beer. Sgt. Melendez said, "At that time, I did not make that decision. I did not come across that determination." He continued, "She didn't appear drunk...just very talkative." Sgt. Melendez said that § 87(2)(b) did not appear to be impaired in any way; he simply found her behavior "weird."

Sgt. Melendez acknowledged that PO Jackson, an officer from the 75th Precinct, came by in an RMP at some point during this vehicle stop. He could not recall who PO Jackson was with on that date.

Sgt. Melendez denied transmitting any messages over the radio regarding this incident, instead stating that PO Jackson was passing by and must have noticed what was happening. According to Sgt. Melendez, PO Jackson kept an eye on § 87(2)(b) as he and PO Ward were in their RMP running § 87(2)(b)'s name. Sgt. Melendez did not remember PO Jackson looking into § 87(2)(b)'s vehicle at any point. After PO Ward issued § 87(2)(b) her summonses, Sgt. Melendez and PO Ward released § 87(2)(b).

After Sgt. Melendez had narrated the events of July 14, 2007, the investigator directly asked him if he reached inside of § 87(2)(b)'s vehicle at any point during this stop. Sgt. Melendez responded, "I might have looked inside of the vehicle because, like I said, I thought it was a stolen vehicle. We didn't know what we had. We looked around to make sure that there were no weapons and stuff inside of the vehicle." He did this "right after § 87(2)(b) was out of the vehicle and I looked and I saw the steering column. She stepped back a little bit and I looked around, just lungeable areas." The investigator asked Sgt. Melendez to be more specific with respect to what he meant by "lungeable areas." Sgt. Melendez replied, "the front seat where she was sitting...the floor. I looked in and I looked around to make sure there were no weapons." Sgt. Melendez did this because he was concerned for his safety at this point. This was before § 87(2)(b) had verified her ownership of the vehicle. Sgt. Melendez did not remember whether PO Ward ever looked in § 87(2)(b)'s vehicle. The investigator asked whether Sgt. Melendez ever looked inside of § 87(2)(b)'s vehicle after he verified § 87(2)(b)'s ownership of the vehicle, but SBA Rep. Smarsch intervened, asking Sgt. Melendez whether he ever verified that § 87(2)(b) owned the vehicle and requesting that the investigator pause the record before Sgt. Melendez could answer. The investigator complied, and the record was paused at 10:50 AM. SBA Rep. Smarsch, SBA Rep. Logan, and Sgt. Melendez then exited the interview room from 10:50 AM until 10:55 AM.

When the record was resumed at 10:55 AM, the investigator asked Sgt. Melendez to describe the neighborhood where he stopped § 87(2)(b). Sgt. Melendez said that it was a "drug-prone location" with high crime, and that it was mainly residential. He additionally confirmed that this knowledge of this neighborhood affected his level of suspicion with respect to § 87(2)(b). The investigator directed Sgt. Melendez's attention back to the vehicle search and asked him whether, when he searched § 87(2)(b)'s "lungeable areas," he moved any items around inside of the vehicle. Sgt. Melendez stated that he might have moved objects around for the purpose of determining whether there were any weapons in this vehicle. SBA Rep. Smarsch asked Sgt. Melendez what else he was looking for, and Sgt. Melendez added that he was also searching for paperwork to verify the vehicle's owner. He did not remember whether § 87(2)(b) indicated at any point that there might have been valid paperwork somewhere in the vehicle. When asked for the specific crime that he suspected § 87(2)(b) of committing, Sgt. Melendez responded: "stolen vehicle." Sgt. Melendez was asked whether he had seen anything else notable about the physical condition of § 87(2)(b)'s vehicle—either prior to the stop or during his search—other than the broken window and the tampered-with steering column. Sgt. Melendez confirmed that the interior of the car was "very messy." Additionally, Sgt. Melendez said that there was never any discussion of the possibility of arresting § 87(2)(b) for any of the offenses for which she was ultimately issued summonses. He did not make the decision to serve § 87(2)(b) the summons for § 87(2)(b) immediately upon pulling over § 87(2)(b)'s car; it was only after he verified her name and her ownership of the vehicle. If he had been unable to verify § 87(2)(b)'s name, Sgt. Melendez said, he would have brought her back to the precinct.

PO Jason Jackson

Memo Book

PO Jackson recorded the following entry in his memo book regarding the stop of § 87(2)(b)'s vehicle on this date: at 8:40 AM, he responded to a 10-85 call (need additional unit) from Sgt. Roberto Melendez at Atkins Avenue and Hegeman Boulevard (Encl. 16A-B). PO Jackson explained in his CCRB interview that he generally records a 10-85 in his memo book whenever he responds to a call for back-up, as well as whenever he stops by the scene of another police action and offers his assistance.

CCRB Testimony

PO Jason Jackson was interviewed at the CCRB on February 7, 2008 at 11:37 AM (Encl. 17A-C). PO Jackson is a § 87(2)(b)-old black male, 6'4", 185 lbs., with black hair and brown eyes.

PO Jackson worked a tour of 0705 x 1540 on July 14, 2007. He was assigned to Sector G patrol with PO Joyce in RMP #2422. Both officers were in uniform.

On July 14, 2007 at approximately 9:10 AM, PO Jackson and PO Joyce were present for a vehicle stop involving Sgt. Melendez and PO Aisha Ward at Atkins Avenue and Hegeman Boulevard. PO Jackson reviewed his memo book to refresh his memory about this incident, but he was initially unable to recall whether he received a radio call for back-up from Sgt. Melendez, or whether he and PO Joyce simply stopped by Atkins Avenue and Hegeman Boulevard and observed Sgt. Melendez's and PO Ward's vehicle stop. He initially said that this incident did not stand out in his mind in any way.

The investigator directed PO Jackson's attention to two of the summons that PO Ward issued to § 87(2)(b) on this date—one for § 87(2)(b), and the other for § 87(2)(b)—but these infractions did not sound familiar to PO Jackson. Subsequently, the investigator attempted to refresh PO Jackson's memory with respect to this incident by describing § 87(2)(b)'s vehicle—a white 1995 Plymouth Neon with a damaged window—at which point PO Jackson asked whether the car's ignition was broken. The investigator affirmed that, by § 87(2)(b)'s account, the ignition of the vehicle had been visibly disturbed. Confirming that he was developing his recollection of this incident, PO Jackson described § 87(2)(b)'s vehicle as a white four-door car with a broken ignition, a broken lock (the key slot attached to the ignition, which was hanging down from the steering column), and a busted door. At this time, PO Jackson stated that he remembered running a computer check of § 87(2)(b)'s license plate number and vehicle identification number.

As PO Jackson's memory of the incident appeared to be growing clearer, the investigator directed PO Jackson's attention back to the beginning of the incident. PO Jackson stated that, when he arrived at the scene, § 87(2)(b)'s vehicle had already been stopped. § 87(2)(b) was standing behind her vehicle. PO Jackson could not recall whether PO Ward and Sgt. Melendez were inside or outside of their RMP at this time. PO Jackson acknowledged that he did not know whether any of the doors of § 87(2)(b)'s vehicle were open when he arrived, explaining that he did not think that § 87(2)(b)'s driver's door was even capable of opening, as it had apparently been dented in an accident. Upon his arrival at this location, PO Jackson spoke with § 87(2)(b). § 87(2)(b) provided "false" and inconsistent answers to PO Jackson's questions. PO Jackson described § 87(2)(b) as "lethargic," but he could not recall whether § 87(2)(b) appeared to be physically impaired or intoxicated in any way. As PO Jackson spoke with § 87(2)(b), PO Joyce was either standing next to PO Jackson or sitting in the RMP.

PO Jackson could not recall who specifically ran § 87(2)(b)'s license plate and VIN, but he acknowledged that it could have been him and/or PO Joyce. At this point, the investigator directed PO Jackson's attention to the warrant transaction log for § 87(2)(b) which displayed PO Joyce's Tax ID number as the officer logged into the system at the time of this incident. PO Jackson accepted that he and/or PO Joyce must have run § 87(2)(b)'s information in the system. When asked whether there was anything unusual about § 87(2)(b)'s VIN or license plate—PO Jackson said that he did not remember seeing § 87(2)(b)'s ID—PO Jackson replied that if anything odd had happened, he would have most likely recorded it in his memo book. Even after viewing the warrant transaction log, PO Jackson maintained that he did not remember anything odd about § 87(2)(b)'s identification information. PO Jackson volunteered that the only memorable aspect of this car stop, for him, was the fact that § 87(2)(b)'s vehicle—specifically, its ignition—was damaged. He estimated that he spent 30-40 minutes at the scene of this vehicle stop, during which time he and PO Joyce ran § 87(2)(b)'s information and waited to receive a thumbs up to leave. He could not recall whether he and PO Joyce left the scene before § 87(2)(b) or Sgt. Melendez and PO Ward.

PO Jackson described the neighborhood in the vicinity of Atkins Avenue and Hegeman Boulevard as a mainly residential area without any distinctive crime problems.

With respect to § 87(2)(b)'s specific allegation of a vehicle search, PO Jackson addressed this charge as follows: he did not search § 87(2)(b)'s car, nor did he see any officers search § 87(2)(b)'s car. He acknowledged that he looked inside of § 87(2)(b)'s car, but he described this action as peering through § 87(2)(b)'s window to examine her vehicle's ignition; specifically, he denied reaching inside of the car at any point, or seeing any other officers do so. To his recollection, § 87(2)(b)'s trunk was not open at any point. Finally, he denied removing anything from § 87(2)(b)'s vehicle or seeing any other officers remove anything from this vehicle.

Communications Records

Sprint Report

The Sprint report for this incident (Job S04594) is classified as a 10-10V2 (possible crime – suspicious vehicle) at Atkins Avenue and Hegeman Avenue. This Sprint shows that the officers assigned to 75ST2 arrived at the scene at 8:33 AM, followed by the officers assigned to 75G1, who arrived at 8:36 AM. Both sectors reported that summonses were issued at 9:25 AM. (Encl. 18A-B)

NYPD Documents

Warrant Transaction Log

The warrant transaction log for the name § 87(2)(b) reveals that the officer with Tax ID #938739 (PO S. Joyce) conducted a warrant check on § 87(2)(b) on July 14, 2007 at 8:35 AM (Encl. 19A-I).

Summons Log

The summons log for the 75th Precinct for July 14, 2007 lists only one summons issued to § 87(2)(b) on this date: Summons ID § 87(2)(b), served to § 87(2)(b) at 9:02 AM by PO Ward. The charge listed on this summons was “§ 87(2)(b)” (Encl. 20A-D).

Roll Call

The 75th Precinct roll call for Tour 2 on July 14, 2007 confirms that Sgt. Melendez worked a tour of 0655 x 1552 as patrol supervisor with PO Ward in RMP #1311, and that PO Jackson and PO Joyce worked tours of 0705 x 1540, during which they were assigned to zone 1 sector patrol in RMP #2422 (Encl. 21A-V).

Subject Officers’ CCRB Complaint History

In his 16 years with the NYPD, Sgt. Melendez has been the subject of one substantiated CCRB case, which included four individual substantiated allegations. In CCRB case #200409169, the CCRB found that Sgt. Melendez supervised the improper stops, frisks, and searches of four civilians, and that he supervised the improper search of the vehicle in which these civilians were occupants. The NYPD declined to prosecute this case (Encl. 4). In contrast, in her two years with the NYPD, PO Ward has never been the subject of a substantiated CCRB allegation (Encl. 5). Likewise, in his two years with the NYPD, PO Jackson has never been the subject of a substantiated CCRB allegation (Encl. 6). Finally, during his tenure with the NYPD, PO Joyce was never the subject of a substantiated CCRB allegation (Encl. 7). PO Joyce resigned from service on October 2, 2007 (Encl. 25N).

Civilian CCRB Complaint History

Prior to the present case, § 87(2)(b) filed four complaints with the CCRB between 1996 and 2005: § 87(2)(b)

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b) (Encl. 8).

Civilian Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Summonses

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

The participation of PO Ward, Sgt. Melendez, and PO Joyce in this incident has been verified through various means: § 87(2)(b)'s summonses list PO Ward's name and tax ID number under the section labeled "complainant," and PO Ward acknowledged in her official testimony that she stopped § 87(2)(b) on July 14, 2007; Sgt. Melendez is listed as PO Ward's partner in the 75th Precinct roll call on this date, and he similarly acknowledged on-record that he interacted with § 87(2)(b) on July 14, 2007; and PO Joyce's tax ID number is registered in the warrant transaction log for the name § 87(2)(b) indicating that he conducted a warrant check on § 87(2)(b) on July 14, 2007 at 8:35 AM. Additionally, PO Jackson acknowledged in his CCRB testimony that he and PO Joyce were present for the stop and alleged search of § 87(2)(b)'s vehicle on this date.

Undisputed Facts

It is undisputed that § 87(2)(b) stopped her vehicle on Atkins Avenue and briefly traveled in reverse, and pulled to the side of the road, then back into the traffic lane, before PO Ward and Sgt. Melendez stopped her vehicle. It is also undisputed that § 87(2)(b) exited her vehicle at some point after being stopped. In addition, it is not in dispute that at least one window in § 87(2)(b)'s vehicle was broken, its ignition and/or steering column had been visibly disturbed, and its interior was in disarray. It is similarly undisputed that § 87(2)(b) was unable to provide PO Ward and Sgt. Melendez with documents that explicitly established her ownership of the vehicle she was driving. Additionally, it is undisputed that Sgt. Melendez looked- and reached inside of § 87(2)(b)'s vehicle, near the driver's seat, and that PO Ward reached inside of § 87(2)(b)'s vehicle to extract an empty beer can. Finally, it is undisputed that the officers were ultimately able to verify § 87(2)(b)'s identity, and they accordingly issued her a number of summonses.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

§ 87(2)(b) alleged that, almost immediately after pulling her over, Sgt. Melendez and PO Ward ordered her out of her vehicle. § 87(2)(b) was not entirely clear on whether the officers had asked her for ID—which she was admittedly unable to produce—before asking her to step out of her car, but she recalled that an officer had mentioned that the condition of her vehicle led them to believe that it may have been stolen. PO Ward corroborated § 87(2)(b)'s account, stating that she asked § 87(2)(b) for her license and registration as soon as she pulled her over, and after observing § 87(2)(b)'s "erratic" behavior and determining that she was unable to provide the officers with the requested documents, she asked § 87(2)(b) to step outside of her vehicle because she feared for her safety. In contrast, Sgt. Melendez claimed that, as soon as § 87(2)(b) pulled her vehicle over to the side of the

road—after initially failing to respond to his RMP’s sirens—she stepped out of the front passenger door of her car. By Sgt. Melendez’s account, § 87(2)(b) exited her vehicle without provocation, both negating the need for a command to this end from him or PO Ward, as well as raising his level of suspicion with respect to § 87(2)(b)’s activities and motives.

§ 87(2)(g)

PO Ward admitted that she had concerns about both § 87(2)(b)’s way of driving and the condition of her car; but at the point at which she initially stopped § 87(2)(b)’s vehicle, she intended only to issue § 87(2)(b) a summons for § 87(2)(b) and to verify that her paperwork was in order—her fears that § 87(2)(b) may have been driving a stolen vehicle were not yet fully realized. For these reasons, § 87(2)(b)’s and PO Ward’s account will be credited here, and Sgt. Melendez’s reliability regarding other elements of this incident will be rendered somewhat more suspect.

According to the officers, one major factor contributing to their level of suspicion—§ 87(2)(g)—was § 87(2)(b)’s demeanor and apparent physical and psychological state at the time of this vehicle stop. § 87(2)(b)’s own testimony never directly addressed this point, though she denied using any alcohol on this date, and she acknowledged that she sustained various physical and psychological injuries in a traffic accident in 2006. Additionally, § 87(2)(b) repeatedly expressed concern about the condition of her car’s battery, as it had recently been replaced and she believed that it was losing power at the time that she was stopped. As a result of these factors, § 87(2)(b) found it difficult to stand for a prolonged period of time, and further, to endure a 30-60 minute detention as her vehicle’s power waned. In comparison, both PO Ward and Sgt. Melendez testified that § 87(2)(b) behaved “erratically”: PO Ward stated that, before § 87(2)(b) was stopped, she reached into the top of her shirt and extracted something, then leaned over to the passenger side of the vehicle and attempt to place this object under the front passenger seat; and Sgt. Melendez confirmed that § 87(2)(b) was “fidgeting” in her seat before she exited her vehicle. Similarly, PO Ward, Sgt. Melendez, and PO Jackson alleged that, when they spoke with § 87(2)(b) as she stood outside of her car, she provided evasive answers to their questions, and she seemed to be incapable of standing still. However, one significant point of divergence between the officers’ statements was PO Ward’s suspicion that § 87(2)(b) may have been under the influence of an illegal substance at the time of this incident. Oddly enough, no officer claimed to believe that § 87(2)(b) may have consumed the can of beer which was found in her vehicle. To the extent that no officer found this notion so alarming as to justify any further investigation into the matter—§ 87(2)(b) was permitted to continue driving after she received her summonses—renders this assertion not only weak, but also troublesome. Nevertheless, it is reasonable to conclude that, at the very least, § 87(2)(b) did “fidget” and did have a difficult time responding to the queries of PO Ward, Sgt. Melendez, and PO Jackson. The question remains as to whether the officers acted reasonably in interpreting these observations as evidence of criminality or potential threats to their safety.

The most significant issue in this case is the scope of the search of § 87(2)(b)’s vehicle performed by PO Ward, Sgt. Melendez, and/or PO Jackson and PO Joyce. § 87(2)(b) alleged that after she was ordered her out of her car, PO Ward, PO Jackson, and PO Joyce searched the interior of her vehicle extensively: they looked under the seats and in the door, they moved items around—exposing, she claimed, an empty can of beer that was resting underneath a seat—and, in PO Jackson and PO Joyce’s case, they adjusted the rear seat so that they could gain access to the trunk. Sgt. Melendez’s search, on the other hand, was less invasive, as he only put his head inside of the car and looked around. In contrast, PO Ward and PO Jackson denied searching § 87(2)(b)’s vehicle: PO Ward said that she only reached inside of § 87(2)(b)’s car to remove an empty 16-oz. can of beer that she observed resting underneath the driver’s seat from her vantage point outside of the vehicle; she believed that she did this as § 87(2)(b) was searching for her paperwork inside of the car, and she asserted that she did not break the plane of § 87(2)(b)’s car at any other point during this encounter. PO Jackson admitted that he peered through § 87(2)(b)’s window and observed the interior of the car, but he unequivocally denied reaching into § 87(2)(b)’s vehicle at any time during this incident. With regards to PO Joyce’s actions, no officers recalled PO Joyce looking- or reaching into § 87(2)(b)’s car; and due to PO Joyce’s resignation from service, he was unable to provide either corroborating or dissenting testimony on this point. In sum, no officers admitted to seeing their partners search § 87(2)(b)’s vehicle. § 87(2)(g)

§ 87(2)(g)

In fact, Sgt. Melendez § 87(2)(g) said that, after § 87(2)(b) voluntarily exited her vehicle and displayed what he considered to be suspicious behavior, he noticed that the car's steering column had been disturbed, so he searched the area around the driver's seat (what he described as § 87(2)(b)'s "lungeable area") for weapons. However, he did not volunteer this information, but only acknowledged his actions on direct examination. Further, as the investigator began to question Sgt. Melendez with respect to this disclosure, SBA Rep. Art Smarsch requested that the investigator pause the record, at which point he, SBA Rep. Pat Logan, and Sgt. Melendez left the interview room and convened outside. When the record was resumed five minutes later, Sgt. Melendez added—on SBA Rep. Smarsch's cue—that he had been searching around the driver's seat of § 87(2)(b)'s vehicle for ownership documents as well as weapons, and he observed that the profile of the surrounding neighborhood had raised his level of suspicion regarding § 87(2)(b)'s behavior and the condition of her car. § 87(2)(g)

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: Sgt. Roberto Melendez searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(g)

According to *People v. Davis* (1996), officers are permitted to stop a vehicle when they observe its driver making "sudden and dangerous movements and stops" (Encl. 1G); or, as per *People v. Totman* (1994), when they observe a driver stopping in the middle of a road (Encl. 1F). As observed above, the somewhat nebulous definition of "reckless driving" dictated in NYS Vehicle and Traffic Law §1212 makes such actions misdemeanors—potentially summonsable or arrestable offenses. In normal circumstances, Barry Kamins writes in *New York Search and Seizure* (2007), "once the officer issues a summons and determines that the driver's license, registration, and insurance are in order, the initial justification for seizing and detaining the suspect is exhausted" and any search of this vehicle, consensual or not, cannot be legally justified (Encl. 1I). However, if the driver of a vehicle "fails to produce the required license, registration, or insurance card, [an] officer is permitted to detain the car and driver for further inquiry, since the officer would have reasonable suspicion to believe that a crime has been committed" (Encl. 1O000).

Moreover, Kamins writes, "if during a lawful traffic stop, the officer makes observations that justify a reasonable suspicion of criminal activity, he will be permitted to detain the motorist for further questioning" (Encl. 1J). As per *People v. Bulvard* (1995), "innocuous behavior" by the occupant of a

vehicle (e.g., reaching under a seat) alone is insufficient to found a reasonable suspicion of criminality (Encl. 1M); yet, as per *People v. Bramble* (1994), the presence of a foreign object in the ignition of a car, or as per *People v. Fox* (1995), the sight of a damaged steering column may indeed be considered “objective evidence evincing criminal activity” (Encl. 1O). In addition, officers are permitted to issue certain self-protective orders when stopping vehicles for traffic infractions: for instance, it is within an officer’s prerogative to order the driver of a vehicle to turn off the ignition and step out of the car—though it should be noted that any subsequent motions that break the plane of the vehicle (e.g., sticking one’s head inside of the vehicle to conduct even a visual inspection) are generally held to constitute a “search” of the vehicle under New York State law (Encl. 1OO).

Under what Kamins terms the “automobile exception” to the general requirement that officers obtain a warrant before searching private property, “the police may search a vehicle and any containers found inside when they have probable cause to believe that it contains contraband, a weapon, or evidence of a crime” (Encl. 1OOOOO). As to the factors that supply probable cause, Kamins observes that “the circumstances that supply probable cause to arrest an occupant of a car may also give the police probable cause to believe that the vehicle contains a weapon, contraband, or evidence of a crime”; but, more importantly, he argues, “the circumstances that give rise to probable cause may be *independent* from an arrest, and, in fact, may exist *before* any arrest is made (Encl. 1OOOOO, emphasis Kamins’).

Furthermore, New York courts have upheld an officer’s right to perform a limited search of a vehicle for ownership documentation, to the extent that the verification of a driver’s identity is within the proper scope of inquiry for a vehicle stop based on an evident violation of New York State Vehicle and Traffic Laws: according to Kamins, “Under appropriate circumstances, a police officer can conduct a limited search of a vehicle when there is a question about the ownership of the vehicle and the driver cannot satisfy the officer’s questions.” In addition, Kamins remarks, “If the officer fears for his safety, he can order the driver out of the car so that the officer can look for documentation in an area described by the driver” (Encl. 1FF).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

New York courts have clearly established that “police can seize contraband, evidence, or instrumentalities of a crime when these items are in open view and the officer makes his observations from a lawful vantage point” (Encl. 1CC). Generally speaking, the Court found in *People v. Diaz* (1993) that “under the plain view doctrine, if the sight of an object gives the police probable cause to believe that it is the instrumentality of a crime, the object may be seized without a warrant if... (1) the police are lawfully in the position from which the object is viewed; (2) the police have *lawful access* to the object; and (3) the object’s incriminating nature is immediately apparent” (Encl. 1EE, emphasis Kamins’). Specifically with regards to automobile stops, the Court held in *People v. Class* (1984) that “a visual inspection [can] be made during a valid stop for a traffic violation” (Encl. 1CC).

§ 87(2)(g)

New York Administrative Code §10-125(2b) reads as follows: “No person shall drink or consume an alcoholic beverage, or possess, with intent to drink or consume, an open container containing an alcoholic beverage in any public place except at a block party, feast, or similar function for which a permit has been obtained.” The Administrative Code defines “public place” in §10-125(2) as “a place to which the public or a substantial group of persons has access” or, specifically, “the interior of any stationary motor vehicle which is on any highway, street, road, parking area, shopping area, playground, park or beach located within the city.” Such a violation is punishable by a fine of up to \$25, or imprisonment of up to five days, or both (Encl. 3A-B).

§ 87(2)(g)

§ 87(2)(g)

Allegation B: PO Aisha Ward searched the car in which § 87(2)(b) was an occupant.

Allegation C: PO Jason Jackson searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(g)

§ 87(2)(b) alleged that PO Ward and PO Jackson conducted an extensive search of her vehicle, while PO Ward only acknowledged reaching into § 87(2)(b)’s vehicle to remove an empty beer can that she sighted through the broken rear window of the car, and PO Jackson denied outright breaking the plane of § 87(2)(b)’s vehicle at any point. Sgt. Melendez was only able to sustain PO Ward’s observation of the can and the possibility that she extracted the latter from the car, while PO Jackson could not provide credible testimony to corroborate or refute either account.

§ 87(2)(g)

Allegation D: PO S. Joyce searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(g)

PO Joyce resigned from the NYPD during the course of this investigation, and

he was therefore unable to provide the CCRB with testimony regarding his actions on July 14, 2007. ■
§ 87(2)(g) ■

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: